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6 **UNITED STATES DISTRICT COURT**

7 **DISTRICT OF NEVADA**

8 * * * * *

9 GLAZING HEALTH AND WELFARE
10 FUND, *et al.*,

11 Plaintiffs,

12 vs.

13 ACCURACY GLASS & MIRROR
14 COMPANY, INC., *et al.*,

15 Defendants.

CASE NO.: 2:13-cv-01106-KJD-NJK

**STIPULATION AND ORDER FOR
ENTRY OF SUMMARY
JUDGMENT AGAINST
ACCURACY GLASS & MIRROR
COMPANY, INC.**

Date: N/A

Time: N/A

16 The Plaintiff Trust Funds (“Plaintiffs” or “Trusts”) and Defendants Accuracy Glass &
17 Mirror Company, Inc., (“Defendant” or “Accuracy”), acting by and through their respective
18 undersigned counsel, hereby stipulate and agree as follows:

19 1. On March 31, 2016, the Court entered its Order [ECF No. 181] (the “Order”)
20 making factual findings and conclusions of law, which are incorporated herein by reference, and
21 Ordered as follows:

22 a. that Plaintiffs’ Motion for Partial Summary Judgment [ECF No. 161] is
23 GRANTED in part and DENIED in part;
24 b. that Accuracy is liable to the Trusts for all unpaid contributions and that the
25 Plaintiffs file a supplemental motion for summary judgment on damages
26 within fourteen (14) days of the entry of the Order;
27 c. that Plaintiffs’ Motion for Leave to File Brief in Response to New Authority
28 [ECF No. 173] is GRANTED;

- d. that Defendants' Motion to Reconsider [ECF No. 175] is GRANTED;
- e. that the claims against Mike Lamek and Kelly Marshall personally as fiduciaries under ERISA are DISMISSED;
- f. that Plaintiffs' demand for relief on bonds against Western Surety is GRANTED;
- g. that Plaintiffs' motion for summary judgment for fees in excess of the value of the Bond is DENIED;
- h. that Plaintiffs' Motion to Amend [ECF No. 176] is GRANTED in part and DENIED in part: Plaintiffs are granted leave to amend to add a cause of action against Western Surety Company for relief on the surety bond and a cause of action against Accuracy for Avoidance of Fraudulent Conveyance or Attachment of Proceeds of Sale (but only to the extent that Accuracy's interest in such property was transferred);
- i. that Plaintiffs file a fourth amended complaint in compliance with the Court's order within fourteen (14) days of the entry of the Order.

2. On April 14, 2016, Plaintiffs filed a Fourth Amended Complaint asserting, for the first time, a cause of action against Western Surety Company for relief on Surety Bond No. 58712846 (the “Bond”) and a cause of action against Accuracy for Avoidance of Fraudulent Conveyance or Attachment of Proceeds of Sale related to conveyance of the property located at 5145 Schirlls Street, Las Vegas, Nevada (the “Property”) (but only to the extent that Accuracy’s interest in the Property was transferred).

3. On April 12, 2016, pursuant to the Parties' Stipulation and First Request for Extension, the Court entered an Order [ECF No. 183] extending the deadline to April 28, 2016 for the Plaintiffs to file a supplemental motion for summary judgment on damages in response to the March 31, 2016 Order.

4. On April 29, 2016, pursuant to the Parties' Stipulation and Second Request for Extension, the Court entered an Order [ECF No. 186] extending the deadline to May 12, 2016

1 for the Plaintiffs to file a supplemental motion for summary judgment on damages in response to
2 the March 31, 2016 Order.

3 5. On May 18, 2016, pursuant to the Parties' Third Stipulation and Request for
4 Extension, the Court entered an Order [ECF No. 188] extending the deadline to May 26, 2016.

5 6. In order to avoid further litigation and expense in this matter, the Plaintiffs and
6 Defendant hereby stipulate and agree to the amount of damages to be entered in summary
7 judgment against Accuracy.

8 7. During the period of May 1, 2011 through April 30, 2016 ("Delinquency
9 Period"), Accuracy was bound by one or more Master Labor Agreements ("MLA") with Glaziers
10 Union Local 2001 which require monthly contributions for various employee benefits provided
11 pursuant to the MLA, as set forth below. Accuracy admits that it did not make full contributions
12 on a monthly basis.

13 8. The MLA requires monthly contributions for various employee benefits pursuant
14 to Articles 14 (health and welfare), 15 (pension), 16 (apprenticeship, training, and safety), 19
15 (dues check off, organizing, and market recovery), 20 (industry promotion), 33 (substance abuse
16 rehabilitation), 34 (labor-management cooperation initiatives), 35 (political action), which are to
17 be paid to the Trusts' local trust fund administrator pursuant to Article 17 on behalf of the Trusts.

18 9. Under 29 U.S.C. § 1132(g)(2), the Trusts are entitled to a monetary Judgment
19 against Accuracy for: 1) unpaid contributions; 2) interest on the unpaid contributions; 3)
20 liquidated damages provided for under the plan not in excess of 20 percent; and 4) reasonable
21 attorney's fees and costs. Interest on unpaid contributions is to be determined using the rate
22 provided under the plan or, if none, the rate prescribed under 26 U.S.C. § 6621.

23 10. The Plaintiffs and Defendant, having reviewed the Trust Agreements and other
24 governing plan documents, agree to the interest and liquidated damages rates set forth in
25 Appendix A, attached hereto.

26 11. The Trusts engaged the services of accounting firm Stewart Archibald & Barney
27 ("SAB") to conduct a contract compliance review ("Audit") of Accuracy's payroll records to
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1 determine the exact amounts owed for unpaid contributions during the Delinquency Period and
2 to calculate interest and liquidated damages as provided under the Trusts' governing documents.
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4 12. The Plaintiffs and Defendant agree to the calculations of amounts owed, prepared
5 by SAB, which are included with the Declaration of Glenn Goodnough, CPA, of SAB, attached
6 hereto as Appendix B, including the amounts set forth as to unpaid fringe benefit contributions,
7 interest, liquidated damages, attorney's fees, and audit costs, .

8 13. Wherefore, Judgment shall be entered against Accuracy and in favor of each
9 Plaintiff Trust as follows:

10 a. Plaintiff Glazing Health and Welfare Fund, by through its designated
11 fiduciaries, as collection agent for the Health & Welfare and Substance Abuse
12 contribution categories identified in Appendix B, total judgment in the amount
13 of \$279,313.53, consisting of contributions in the amount of \$106,136.20,
14 interest in the amount of \$16,567.30, liquidated damages in the amount of
15 \$17,869.74, audit fees in the amount of \$73,231.07, and attorney's fees and
16 costs in the amount of \$65,509.22;

17 b. Plaintiff Southern Nevada Glaziers and Fabricators Pension Trust Fund, by
18 through its designated fiduciaries, as collection agent for the 401(k) Fund
19 contribution category identified in Appendix B, total judgment in the amount
20 of \$83,802.01, consisting of contributions in the amount of \$41,694.88,
21 interest in the amount of \$5,298.38, liquidated damages in the amount of
22 \$7,032.55, audit fees in the amount of \$15,256.47, and attorney's fees and
23 costs in the amount of \$14,519.97;

24 c. Plaintiff Painters, Glaziers and Floorcoverers Joint Apprenticeship and
25 J Journeyman Training Trust, by through its designated fiduciaries, as
26 collection agent for the Apprentice contribution category identified in
27 Appendix B, total judgment in the amount of \$41,191.47, consisting of
28 contributions in the amount of \$23,638.45, interest in the amount of
\$2,595.38, liquidated damages in the amount of \$3,747.80, audit fees in the

1 amount of \$6,102.59, and attorney's fees and costs in the amount of
2 \$5,107.25;

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4 d. Plaintiff Painters, Glaziers and Floorcoverers Safety Training Trust Fund, by
5 through its designated fiduciaries, as collection agent for the HSUTAP
6 contribution category identified in Appendix B, total judgment in the amount
7 of \$12,765.68, consisting of contributions in the amount of \$6,853.32, interest
8 in the amount of \$811.46, liquidated damages in the amount of \$1,134.63,
9 audit fees in the amount of \$1,830.78, and attorney's fees and costs in the
amount of \$2,135.49;

10 e. Plaintiff IUPAT Political Action Committee, by through its designated
11 fiduciaries, as collection agent for the National PAT and PAC contribution
12 categories identified in Appendix B, total judgment in the amount of
13 \$3,828.05, consisting of contributions in the amount of \$3,159.17 and audit
14 fees in the amount of \$668.88;

15 f. Plaintiff Southern Nevada Painters and Decorators and Glaziers Labor-
16 Management Cooperation Committee Trust, by through its designated
17 fiduciaries, as collection agent for the LMCC, Industry Promotion,
18 Organizing, Market Recovery, and Check-Off Dues contribution categories
19 identified in Appendix B, total judgment in the amount of \$104,403.44,
20 consisting of contributions in the amount of \$70,534.60, interest in the amount
21 of \$2,994.42, liquidated damages in the amount of \$4,276.50, audit fees in the
22 amount of \$14,646.22, and attorney's fees and costs in the amount of
23 \$11,951.70;

24 g. Plaintiff IUPAT Industry Pension Trust Fund, by through its designated
25 fiduciaries, as collection agent for the National Pension, National FTI, and
26 National LMCI contribution categories identified in Appendix B, total
27 judgment in the amount of \$590,102.01, consisting of contributions in the
28 amount of \$293,621.72, interest in the amount of \$14,676.70, liquidated

damages in the amount of \$57,253.32, audit fees in the amount of \$112,839.29, and attorney's fees and costs in the amount of \$111,710.98;

h. Plaintiff Southern California, Arizona, Colorado, and Southern Nevada Glaziers, Architectural Metal and Glass Workers Pension Trust Fund, by through its designated fiduciaries, as collection agent for the Southern California Pension contribution categories identified in Appendix B, total judgment in the amount of \$251,717.46, consisting of contributions in the amount of \$171,510.47, interest in the amount of \$27,141.09, liquidated damages in the amount of \$33,537.61, and audit fees in the amount of \$19,528.29.

14. Interest shall accrue on the Judgment at the rate of seven percent (7%) per annum from the date of entry until paid in full.

15. The cause of action in the Fourth Amended Complaint against Western Surety Company for relief on the Bond shall be dismissed without prejudice.

16. The cause of action in the Fourth Amended Complaint against Accuracy for Fraudulent Conveyance of the Property shall be dismissed with prejudice.

17. The Plaintiffs and Defendant agree that by entry of Judgment against Accuracy as set forth herein, and by dismissal of the new causes of action asserted in the Fourth Amended Complaint as set forth herein, all claims in this case will be resolved. Therefore, entry of Judgment as set forth herein shall be considered final for the purposes of appeal under 28 U.S.C. § 1291 and this case may be closed.

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1 18. The Plaintiffs and Defendant agree that any right to appeal the factual findings
2 and conclusions of law contained in the Order and incorporated herein by reference shall run
3 from the date of entry of Judgment as set forth herein.

4 DATED this 25th day of May, 2016.

5 **CHRISTENSEN JAMES & MARTIN**

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Attorneys for Plaintiffs

5 **GORDON SILVER**

6 By: /s/ Mark D. Dzarnoski
7 Mark S. Dzarnoski, Esq.
8 500 N. Rainbow, Suite 120
9 Las Vegas, NV 89107
Attorneys for Defendant Accuracy Glass &
Mirror Company, Inc.

10 **ORDER**

11 Pursuant to the express stipulation between the Plaintiffs and Defendant Accuracy Glass
12 & Mirror Company, Inc. set forth above, and good cause appearing herefore,

13 **IT IS HEREBY ORDERED** that Western Surety Company and the Cause of Action
14 asserted against Western Surety Company for relief on the Bond are dismissed without
15 prejudice;

16 **IT IS FURTHER ORDERED** that the cause of action against Accuracy Glass & Mirror
17 Company, Inc. for Fraudulent Conveyance of the Property is dismissed with prejudice;

18 **IT IS FURTHER ORDERED** that final Judgment shall be entered against Accuracy
19 Glass & Mirror Company, Inc. and in favor of the Plaintiff Trusts as follows:

20 a. Plaintiff Glazing Health and Welfare Fund, by through its designated
21 fiduciaries, as collection agent for the Health & Welfare and Substance Abuse
22 contribution categories identified in Appendix B, total judgment in the amount
23 of \$279,313.53, consisting of contributions in the amount of \$106,136.20,
24 interest in the amount of \$16,567.30, liquidated damages in the amount of
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\$17,869.74, audit fees in the amount of \$73,231.07, and attorney's fees and costs in the amount of \$65,509.22;

- b. Plaintiff Southern Nevada Glaziers and Fabricators Pension Trust Fund, by through its designated fiduciaries, as collection agent for the 401(k) Fund contribution category identified in Appendix B, total judgment in the amount of \$83,802.01, consisting of contributions in the amount of \$41,694.88, interest in the amount of \$5,298.38, liquidated damages in the amount of \$7,032.55, audit fees in the amount of \$15,256.47, and attorney's fees and costs in the amount of \$14,519.97;
- c. Plaintiff Painters, Glaziers and Floorcoverers Joint Apprenticeship and Journeyman Training Trust, by through its designated fiduciaries, as collection agent for the Apprentice contribution category identified in Appendix B, total judgment in the amount of \$41,191.47, consisting of contributions in the amount of \$23,638.45, interest in the amount of \$2,595.38, liquidated damages in the amount of \$3,747.80, audit fees in the amount of \$6,102.59, and attorney's fees and costs in the amount of \$5,107.25;
- d. Plaintiff Painters, Glaziers and Floorcoverers Safety Training Trust Fund, by through its designated fiduciaries, as collection agent for the HSUTAP contribution category identified in Appendix B, total judgment in the amount of \$12,765.68, consisting of contributions in the amount of \$6,853.32, interest in the amount of \$811.46, liquidated damages in the amount of \$1,134.63, audit fees in the amount of \$1,830.78, and attorney's fees and costs in the amount of \$2,135.49;
- e. Plaintiff IUPAT Political Action Committee, by through its designated fiduciaries, as collection agent for the National PAT and PAC contribution categories identified in Appendix B, total judgment in the amount of

\$3,828.05, consisting of contributions in the amount of \$3,159.17 and audit fees in the amount of \$668.88;

- f. Plaintiff Southern Nevada Painters and Decorators and Glaziers Labor-Management Cooperation Committee Trust, by through its designated fiduciaries, as collection agent for the LMCC, Industry Promotion, Organizing, Market Recovery, and Check-Off Dues contribution categories identified in Appendix B, total judgment in the amount of \$104,403.44, consisting of contributions in the amount of \$70,534.60, interest in the amount of \$2,994.42, liquidated damages in the amount of \$4,276.50, audit fees in the amount of \$14,646.22, and attorney's fees and costs in the amount of \$11,951.70;
- g. Plaintiff IUPAT Industry Pension Trust Fund, by through its designated fiduciaries, as collection agent for the National Pension, National FTI, and National LMCI contribution categories identified in Appendix B, total judgment in the amount of \$590,102.01, consisting of contributions in the amount of \$293,621.72, interest in the amount of \$14,676.70, liquidated damages in the amount of \$57,253.32, audit fees in the amount of \$112,839.29, and attorney's fees and costs in the amount of \$111,710.98;
- h. Plaintiff Southern California, Arizona, Colorado, and Southern Nevada Glaziers, Architectural Metal and Glass Workers Pension Trust Fund, by through its designated fiduciaries, as collection agent for the Southern California Pension contribution categories identified in Appendix B, total judgment in the amount of \$251,717.46, consisting of contributions in the amount of \$171,510.47, interest in the amount of \$27,141.09, liquidated damages in the amount of \$33,537.61, and audit fees in the amount of \$19,528.29.

1 **IT IS FURTHER ORDERED** that interest shall accrue on the Judgment at the rate of
2 seven percent (7%) from the date of entry of this Judgment until paid in full;

3 **IT IS FURTHER ORDERED** that entry of this Judgment shall be considered final for
4 the purposes of appeal under 28 U.S.C. § 1291 and any right to appeal the factual findings and
5 conclusions of law contained in the Court's March 31, 2016 Order and incorporated herein by
6 reference shall run from the date of entry of this Judgment as set forth herein; and
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8 **IT IS FURTHER ORDERED** that the Clerk of Court shall enter Judgment accordingly
9 and close this case.

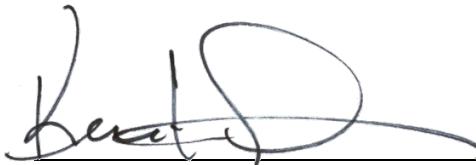
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11 DATED this 26th day of May, 2016.

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15 Kent J. Dawson
16 United States District Judge

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18 Submitted By:

19 **CHRISTENSEN JAMES & MARTIN**

20 By: /s/ Wesley J. Smith
21 Wesley J. Smith, Esq.
22 *Attorneys for Plaintiffs*

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